

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MARK ALAN SCARBOROUGH,)	
)	
Petitioner,)	
)	
v.)	1:14CV400
)	1:12CR43-1
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

BEATY, District Judge.

On April 19, 2016, the Recommendation of the United States Magistrate Judge [Doc. #39] was filed and notice was served on the parties pursuant to 28 U.S.C. § 636(b). In the Recommendation, the Magistrate Judge recommended that Petitioner’s “Supplement to His Objections to the Magistrate’s Report and Recommendation with a Request for an Evidentiary Hearing and/or Resentencing” [Doc. #37] be construed as a motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) and/or a motion for relief from judgment under Federal Rule of Civil Procedure 60(b) and be denied without issuance of a certificate of appealability. The Magistrate Judge also recommended that Petitioner’s “Supplement of the Supreme Court’s Anticipated Ruling in Welch v. U.S., of Which Will Clarify the Retroactivity of the Ruling in Johnson v. U.S., and Request for Status of the Pending Habeas Corpus Motion” [Doc. #38] be construed as a motion for relief from judgment under Federal Rule of Civil Procedure 60(b) and be denied without issuance of a certificate of appealability. No objections were filed within the time limits prescribed by § 636.

In the absence of objections, this Court reviews the Recommendation only for clear

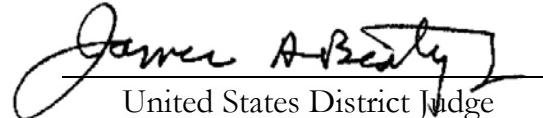
error. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Fed. R. Civ. P. 72 advisory committee's note. The Court has appropriately reviewed the Recommendation. Having done so, the Court finds that no clear error exists and that the Recommendation should be adopted. The Magistrate Judge's Recommendation [Doc. #39] is therefore affirmed and adopted for the reasons set forth therein.

IT IS THEREFORE ORDERED that Petitioner's "Supplement to His Objections to the Magistrate's Report and Recommendation with a Request for an Evidentiary Hearing and/or Resentencing" [Doc. #37] is construed as a motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) and/or a motion for relief from judgment under Federal Rule of Civil Procedure 60(b) and is DENIED.

IS IT FURTHER ORDERED that Petitioner's "Supplement of the Supreme Court's Anticipated Ruling in Welch v. U.S., of Which Will Clarify the Retroactivity of the Ruling in Johnson v. U.S., and Request for Status of the Pending Habeas Corpus Motion" [Doc. #38] is construed as a motion for relief from judgment under Federal Rule of Civil Procedure 60(b) and is DENIED.

IT IS FURTHER ORDERED that, finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is DENIED.

This, the 31st day of May, 2016.



James A. Beatty
United States District Judge